

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 36 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF SHANTABEN DAHYABHAI- BHAGWANDAS D PATEL

Versus

SAROJBEN WD/O N S PANDYA

Appearance:

MR AJ PATEL for Petitioners
MR SM SHAH for Respondent No.1 & 2.
MR KJ KAKKAD for Respondent No. 1
MR PK PANDYA for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 23/03/2001

C.A.V.JUDGEMENT

1. Heirs of deceased Shantaben widow of Dahyabhai Narsinhbhai - petitioners herein - the original defendants have filed the present Civil Revision

Application under Sec. 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Act') against the judgement and decree dt. 6th December, 1990 passed by the learned Assistant Judge, Nadiad. The learned Judge was pleased to partly allow the appeal of the appellants-defendants. By the said judgement, the learned Judge was pleased to quash and set aside the eviction decree dtd. 29th October, 1985 passed by the Civil Judge (J.D.), Dakor on the ground of bonafide requirement, permanent structure, charge of user, denial of landlord's title. The learned appellate Judge, however, was pleased to confirm the eviction decree passed by the Trial Judge on the ground of arrears of rent within the meaning of Sec. 12(3)(b) under the provisions of the Act. The Standard rent of the "suit premises" was also fixed at Rs.17.50 ps. for the rest of the terms of the judgement and to that extent, the judgement of the learned Civil Judge is confirmed and the original defendant - tenant was directed to hand-over the peaceful possession without any obstruction or any resistance to the landlord on or before 31/12/1990.

2. Smt. Sarojben widow of Pandya Natverlal Shankerlal original plaintiff - landlord have filed Special Civil Suit No.99 of 1979 before the Civil Judge (J.D.) at Dakor, against Shantaben - widow of Dahyabhai Narsinhbhai and ors. under the provisions of the Act. There is a house in the village Dakor being Panchayat No. 2/3, near Bhrampole bearing Municipal No. 2182 of village Dakor (hereinafter referred to as 'the suit premises'). According to the plaintiff, at the time i.e. the date of filing of the suit, the value of the suit property was Rs.30,000/-. It was stated that somewhere on 14th January, 1933, Shri Pandya Shankarlal Harjivan who was residing at Dakor (hereinafter shall be referred to as "the landlord") had given the suit premises to Shri Dahyabhai (hereinafter shall be referred to as "the deft.No.1") for the yearly rent of Rs.187/- for three years, the year to be counted from 14/1/1933 till 13/1/1936. The property tax paid by the tenant and the Conservancy tax was also paid by the landlord. The said Rent Note is produced in this case at Ex.116.

2.1. From the record it appears that the original owner of the property was one Mr.Shankarlal Harjivan Pandya. However, from the record, it appears that the property has been partitioned and ultimately on 22nd April, 1978, Natvarlal - husband of the present respondent Smt. Sarojben became the owner of the property in question and after the death of Natvarlal

somewhere in August, 1978, Smt. Sarojben became the owner of the property.

3. It may also be stated that the plaintiff has also produced a notice dtd. 26th June, 1978 calling upon the defendant for transmission of tenancy and intention to vest tenancy in one person, the same is produced on record at Ex.106. The defendant replied to the said notice on 21st July, 1978 and has stated that they are all qualified tenant. It was also stated that earlier one Mr. Pramodbhai was collecting rent and now the plaintiff should state that to whom the rent is to be paid. The said reply was produced at Ex.107. The learned Judge by his order dtd. 26th September, 1978 in C.M.A. No.7 of 1978 in presumption of tenancy case declared Shantaben as recognized tenant.

4. Thereafter, the plaintiff addressed a notice dtd. 3rd October, 1979 under Sec.12(2) of the Rent Act. In that notice he has claimed arrears of rent for more than six months from 1/7/1972. It was also stated that monthly rent of the suit premises was Rs.17.50 ps. In the said notice it was also stated that the landlord required the suit premises bonafide and reasonably for his personal use. It was also stated that the tenant had constructed some of the Oradies, Latrines and Bathrooms in the suit premises. It was, therefore, stated that the tenant had no right to continue in possession. The said notice is produced at Ex. 104. The said notice was issued on 3rd October, 1979 and the said notice was served on the tenant on 5th October, 1979.

5. The tenant, thereafter, replied to the said notice vide his reply dtd. 2nd November, 1979. In the said reply it was only stated that the rent for the suit premises is excessive and illegal. They were yearly tenant and they are not monthly tenants. They have paid rent of the suit premises in this behalf. They have also denied that the landlord required the suit premises reasonably and bonafide. It was, therefore, contended that the said notice is illegal. The said notice was served by the landlord on 7th October, 1979 and the said reply has been produced at Ex.108.

6. Smt. Sarojben Pandya widow of Natvarlal and Shila - daughter of Natvarlal - original plaintiff filed a suit before the Civil Judge (J.D.), Dakor for obtaining vacant and peaceful possession of the property in question i.e. Panchayat NO.2/3, situated at Dakor. In the said suit, it was contended that the monthly rent of the premises was Rs.17.50 and the tenant is in arrears of

rent from 1/7/1972 and therefore, the plaintiff had addressed a notice dtd. 3rd October, 1979, which has been received by the tenant on 5th October, 1979 and as the tenants are in arrears of rent for more than 6 months, the tenants were in arrears of rent and therefore, the tenancy was sought to be terminated. The plaintiff did not state as to whether he want the decree either under Section 12(3)(a) or 12(3)(b). He only filed the said suit for possession.

7. It was also averred in the plaint that the plaintiff No.1 is widow and now she along with Shilaben cannot live in Bombay, and therefore, she desires to reside at Dakor and therefore, the suit premises is required reasonably and bonafidely. It was also stated that the defendant has constructed some Oradi without permission of the plaintiff, and therefore, the plaintiff is also entitled to obtain the possession of the suit premises. By way of amendment it was also stated that the defendant is also carrying business of sweets and selling the sweets in the suit premises. It was also stated that the Defendant has not paid rent of Rs.1522.50 ps. that is for the period from 1/7/1972 to 30/9/1979. The mesne profit of Rs.17.50 from 1/10/1979 to 20/11/1979, Rs.219/further mesne profit for 12 months, Rs.51/- Notice charges, in all the plaintiff claimed Rs.1811/-. The said suit was filed on 11/11/1979.

8. The defendant filed written statement at Ex.21 and in the said written statement, it was stated that the rent between the parties is not a standard rent, there are other co-owners of the suit property and therefore, the suit is required to be dismissed on the said ground. It was further stated that the rent of the suit premises is very excessive and the same is not standard rent. The suit notice is not legal and valid. It has denied that the arrears of rent from 1/7/1972. It has also stated that the plaintiff has also other property in Dakor and it has denied that they have not constructed any room. Other landlord has also recovered rent and also prayed before the Court for fixation of standard rent. The said written statement was filed on 3/5/1980.

9. After recording the oral evidence and considering the documentary evidence produced by the parties, the learned Civil Judge (J.D.), Dakor passed the judgement and decree dtd. 29th October, 1985 and was pleased to pass a decree of eviction in favour of the plaintiff. The learned Judge has held that the deft. No.1 was tenant of the suit property.

10. The learned trial judge has also relied upon the previous correspondence. The learned Judge held that the notice was legal and valid. It was also stated that if the decree for possession is not passed, the petitioner will suffer irreparable injury and hardship. The learned Trial Judge by his judgement fixed the standard rent at Rs.17.50 ps. The defendant has also constructed permanent structure without consent of the landlord. The plaintiff is entitled for possession of the suit premises. The plaintiff proved their ownership of the suit premises and they are entitled for arrears of the rent.

10.1. The trial court also held that the relationship between the plaintiff and the defendant were of landlord and tenant as the deft.no.1 was the tenant of the suit premises. The learned trial court has accepted the contention of the landlord that the deft. had not paid rent from 1/7/1972 till 19/7/1982 i.e. for 10 years and 6 months and out of that, the tenant had paid rent for only 3 years and thereafter the tenant has not paid any rent and has not produced any receipt in this behalf and therefore, the tenant had failed to comply with the condition of Sec.12(3)(b) of the Act and the tenant lose the protection under Sec.12(3)(b) of the Rent Act. The learned trial court has also held that the deft. also required to pay time barred rent also. The trial court also did not accept the contention of the defendant that they have paid rent from 1/7/1972 to 1978 to one Shri Promodbhai, on the ground that Promodbhai died on 10th August, 1972, and therefore, ultimately, the deft. failed and neglected to pay the time barred rent. The trial court also held that the suit notice dtd.3/8/1979 issued by the plaintiff was legal and valid, and therefore also the plaintiff is entitled for decree.

11. Being aggrieved by the dissatisfied with the aforesaid judgement and decree, the original tenants filed Regular Civil Appeal No.210 of 1985 before the Assistant Judge, Kheda at Nadiad. The said appeal was filed on 9/12/1985.

12. The Assistant Judge, Nadiad by his judgement and decree dtd. 6/12/1990 was pleased to quash and set aside the eviction decree passed by the trial court on the ground of bonafide requirement, permanent structure, change of user and denial of landlord's title. However the learned Judge was pleased to confirm the eviction decree passed on the ground of arrears of rent and also held that the standard rent of the suit premises is

Rs.17.50 ps. and the learned judge was pleased to confirm the decree of the trial court and directed to the tenant to hand over the peaceful and vacant possession of the suit premises without any obstruction or resistance to the land lady on 31/12/1990.

12.1. The learned appellate judge also rejected the contention of the tenant that they have paid rent to one Ajitbhai on the ground that the Ajitbhai was not examined to prove that he has collected the rent. The learned appellate judge held that in this case originally the monthly rent was Rs.15.50 in 1993 and if Rs.2/- is increased by way of tax, then the rent becomes Rs.17.50 p.m. and the same was reasonable rent and not excessive before 1/9/1940. The appellate Judge has further held that as per Sec.7 of the Rent Act, 7.1/2% increase in the rent was permissible under the Rent Act, as the property rented before 1/9/1940, and thereafter, it is an admitted fact that the tax is increased for number of times, and therefore, increase of Rs.2/- in the rent can be considered in this behalf. In view of Sec. 106 of the T.P. Act, it was held that the house is let for residential purpose and therefore, the tenancy can be said to be monthly tenancy, even though the rent is payable early.

12.2 The learned appellate judge has further held that the terms of tenancy, unregistered document under Sec.107(3) of the T.P. Act if any violation of the said Act, the agreement is made then also the terms can be looked into, but however, in view of the judgement of the Supreme Court in the Case of Dhanpal, the notice is legal and valid. The learned Appellate judge has further held that in this case, Rs.2 increased in the rent because the house tax and other municipal taxes are increased from time to time and that increase of Rs.2/in the rent is not excessive, but the same is reasonable, and therefore, the agreed rent of Rs.17.50 becomes standard rent and is not excessive rent and the dispute of standard rent is not a bona fide dispute and therefore, the tenant will not get the benefit of raising the dispute of standard rent. The learned appellate judge further held that in this case the rent was due at the time of notice since 1/1/1972 to 1979. The tenant had deposited the rent in the Court on 6/12/1980 only Rs.561/- for 3 years' rent, while outstanding rent since 1972 for 10 years and 6 months has not paid. The tenant has not paid all the arrears of rent. The appellate court also held that the rent was due for 10 year and 6 months which comes to Rs.1870/-, while the tenant had deposited only Rs.1042/- upto 24/11/1982. The court did not accept the contention of

the tenant that he has paid the rent to Promodbhai or in the alternatively to Ajitbhai. The court held that the Promodbhai died in 1972, whereas the tenant has not examined the Ajitbhai and therefore, the appellate court did not believe the contention of the tenant that he has paid the rent in this behalf. The appellate court held that it is crystal clear that the tenant has not deposited the time barred rent and therefore, the tenant was in arrears of rent for more than 6 months.

12.3 The learned appellate judge has further held that the tenant is in arrears of rent which is clearly established by evidence, and the dispute of standard rent is not bona fide dispute. So, the Court has held that the case will fall under Sec.12(3)(b) and not under Sec.12(3)(a), on the ground that the rent is not payable by every month and the house tax and other taxes have been paid by the tenant. The appellate court has further held that the notice is served. The tenant was in arrears of rent for more than 6 months and on the first day of hearing, he has not paid all the due towards the rent including the time barred rent. Under the circumstances, the Court held that the tenant has not complied with the direction given to him, to get the benefit of Sec.12(3)(b), and therefore, no protection under the Act is provided to the defaulter tenant and ultimately, therefore, the decree passed by the learned Single Judge and which is confirmed by the Appellate Court on the ground of arrears of rent under Sec.12(3)(b) is legal and correct.

13. Being aggrieved by and dissatisfied with the aforesaid judgement and decree of the learned Appellate Judge, the petitioner has filed the present Civil Revision Application before this Court on 9/1/1991.

14. Before considering rival contentions of the parties, the relevant Sections i.e. Section 12(1), Sections 12(3)(a) and 12(3)(b) of the Rent Act, are required to be noted to consider the controversy between the parties, which reads as under;

Sec.12(1) : A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in far as they are consistent with the provisions of this Act."

Sec.12(3)(a);

Where the rent is payable by the month and there is no dispute regarding the amount of st.rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section(2), the Court may pass a decree for eviction in any such suit for recovery of possession.

Sec.12(3)(b);

In any other case, no defence for eviction shall be passed in any such suit, if, on the first day of hearing of the suit or on or before such date as the Court may fix, the tenant pays or tenders in Court the st.rent and permitted increase then due."

15. Shri A.J.Patel, the learned counsel for the petitioner has raised the following contentions:

15.1 He stated that the Courts below committed an error in passing a decree under section 12(3)(b) of the Rent Act, inasmuch as the petitioners had already raised a dispute about standard rent of the suit premises even in the notice reply; and unless such a dispute was resolved the decree under section 12(3)(b) could not have been passed.

15.2 Learned counsel for the petitioner further submitted that the Courts below committed an error in not appreciating that the dispute about the standard rent was resolved only with the final disposal of the suit; and, therefore, section 12(3)(b) of the Rent Act would have no application to the facts of the present case.

15.3 In support of the aforesaid contention, the learned counsel for the petitioner -defendant has relied upon the judgement in the case of Gangaben Poonjabhai Amin Vs. Narayan Sonia and ors., reported in 15 GLR page 310. In para 20 of the said judgement, the learned Judge has held as under ;

"20. It follows from the the above discussion that this is not a case which is governed by clause (a) of Sec.12(3) of the Rent Act. But this does not solve the matter because it was contended on behalf of the petitioner that the

tenant would still liable to eviction inasmuch as he has not fulfilled the conditions of clause (b) of Sec.12(3) of the Act because, it is an admitted position that on the first day of hearing he has not paid up the whole amount of the rent in arrears of which was found due on that date. As already stated above, rent deposited by tenant on the first day of the hearing was short by Rs.119/-. Therefore, prima facie it cannot be disputed that the tenant has not deposited the rent in arrears on the first day of the hearing of the suit, though he has deposited the whole amount of rent in arrears on subsequent dates. Therefore, the question is that what is the effect of this position? While considering this question, it should be remembered that in his written statement the tenant had raised a question as regards the standard rent, and had requested the court to fix the same. However, the court did not fix any interim standard rent and even after the tenant moved the Court by his application Ex. 25 the Court, at the request of the other side decided to dispose of the question of standard rent at the time of disposing the suit itself. The question which therefore arises to be determined is the legal effect of the want of court's order as regards interim standard rent so far as clause (b) of Sec. 12(3) of the Rent Act is concerned. The answer of this question is supplied by two decisions of this Court. One given by a Single Judge in Harnamsing Lalsing Vs. Gangaram, (1968) 9 GLR and another a Division bench in Nanji Pancha Vs. Daulal (1970) 11 GLR 285. In both these decisions it is held that where there is a dispute about the standard rent, the tenant would not be in a position to pay or tender the standard rent, on the first date of hearing, and fixing another date by the Court for payment or tender would be ineffectual until the standard rent is fixed. It is further observed that in absence of the Court acting suo-motu to regularise payments or for fixing some other date for payment, the tenant would never be able to claim protection under Sec. 12(3)(b) as the first date of hearing had already gone and the subsequent payments could only be made under the order of the Court. According to both these decisions law impose a fetter on the power of the Court to pass a decree for eviction without considering whether the tenant was protected

under Sec. 12(3)(b). It has further taken the view that when the benefit of Sec. 12(3)(b) could be only availed of if the Court fixes the amount of standard rent, it becomes the mandatory duty of the Court to exercise the above said power of suo-motu so that the benefit of Sec. 12(3)(b) is not rendered illusory. According to these decisions even at the state of appeal or revision the court would have suo-motu to exercise power to give time to the tenant to pay up the dues before passing any decree for eviction. It is thus obvious that both these decisions of the Court cast a duty on the Court to fix the amount of standard rent in cases where the dispute of standard rent is raised by the tenant and that unless this duty is performed by the Court the tenant cannot be held liable for eviction on the ground that he has not complied with the provisions contained in clause (b) of Sec. 12(3) of the Rent Act. Since in the instant case the Court has failed to perform its duty in fixing the standard rent suo-motu even though the tenant had raised a dispute as regards the standard rent, it cannot be said that the tenant has lost the protection given by clause (b) of Sec. 12(3)."

15.4 The learned counsel has relied upon the judgment of this Court in the case of Rupaben wd/o Kaththu Dhanji & Anr. Vs. Babubhai Deojibhai reported in 1983(1) GLR 263. In para 4 the Hon'ble Court has observed as under:

"Mr.A.L.Shah, the learned Advocate for the petitioners-tenants urged only one point before me namely, the tenants were not in a position to know exactly at what rate they were required to pay up the arrears and hence, as they were not specifically informed by a judicial decision of the rate of deposit, any short-fall at some stage cannot go to their detriment and they cannot be said to have forfeited the benign benefit of sec.13(3)(b) of the Bombay Rent Act. There are two judgments of this Court, one delivered by Mr Brother Majmudar, J. in the case of Champaben v. Gopinath Gangadhar, XXI GLR page 709 and one unreported judgment of mine in the case of Naranbhai Nathabhai Koli v Modhia Panalal Maganlal in the Civil Revision Application No.1635/80 decided by me on 9th April, 1982. In the case decided by me the case was falling under sec.12(3)(b) of the Bombay Rent Act and for the technical purpose of sec.12(3)(a) it could be

said that there was no dispute about standard rent in so far as a having been not raised within one month from the date of the notice, as is the case in this revision application also I, however held and so, has been held by Mr Brother Majmudar J. in the case of Champaben, that in order to avail himself of the benefit of sec.12(3)(b) of the Rent Act, the tenant must know at what rate he has to go on paying the rent and if there was on hand of the Trial Court as well as the Appellate Court, the question of deciding what the standard rent is, the tenant can be said to be technically not able to deposit the rent fully, even-though he may be willing to do so. I and My Brother Majmudar, J. have placed our reliance on the earlier judgment of the Division Bench of this Court in the case of Manji Pancha v. Daulal Naraindas, XI GLR page 285. In view of these judgments, the tenant's revision application is required to be allowed."

15.5 The learned Counsel further relied upon the another judgement reported in 1999(1) GLR page 825 in the case of Narbheram Amberam Versus Jayantilal Dayabhai. In para 19 of the said judgement, the Hon'ble Court has held as under ;

"19. It is now to be seen whether the landlord could establish a case for decree for eviction under Sec.12(3)(b) of the Act. In the instant case before me no doubt more than six months' rent was due from the tenant. The said rent was payable monthly, but there was dispute regarding the standard rent which was raised by the tenant at the earliest opportunity in his reply to the notice which was given within a month of service of notice of demand. The said dispute was not resolved. Dispute regarding the standard rent was also raised in the written statement. The said dispute was resolved by the trial Court only at the time of final disposal of the suit in its judgement. Thus, the dispute regarding the standard rent remained unresolved till the judgement was delivered by the trial Court. In the circumstances, the tenant could not have know whether he was to deposit the rent at the rate claimed in the notice and in the suit or at the

rate asserted by him to be the standard rent. If there was a bona fide dispute of the standard rent no decree for eviction could be passed under Sec. 12(3)(b) of the Act. If, however, there was a bona fide dispute of the standard rent and the same was not resolved till the disposal of the suit the decree for eviction could not be passed. The trial Court has not observed that the dispute cannot be said to be mala fide simply because the trial Court accepted the version of the landlord. If there was bona fide dispute of standard rent and the same was not resolved till disposal of the suit the decree for eviction under Sec. 12(3)(a) could not be passed. If the decree for eviction under Sec. 12(3)(a) could not be passed the same could not be passed under Sec.12(3)(b) of the Act inasmuch as the cases covered under Sec. 12(3)(b) are different from the cases covered under Sec.12(3)(a) of the Act."

15.6 He further submitted that the Courts below ought to have appreciated that the rent due to the opponents has already been deposited in the Court and, therefore, the decree under section 12(3)(b) could not have been passed.

15.7 He further submitted that looking to the reading of the plaint the suit was filed for recovery of possession on the ground of non-compliance of the provisions of sec.12(3)(a) of the Rent Act. He submitted that if plaint is read carefully then it is clear that it is filed on the ground of the provisions of section 12(3)(a) of the Rent Act. He submitted that if the suit is filed for the ground under Sec.12(3)(a) of the Act, the Courts below could not have passed a decree under section 12(3)(b) of the Rent Act.

15.8 The learned counsel for the petitioner has also relied upon the judgment of this Court rendered in the case of Pinjara Habib Mohmed Vs. Pathan Nisar Ahmedkhan reported in 1999(2) GLR 1385. In para 13 the Court has observed as under:

"para 13. Section 12(3)(b) provides that in any other case no decree for eviction shall be passed in any such suit if on the first day of hearing of the suit or on or before such other date as

the Court may fix the tenant pays or tenders in Court the standard rent and permitted increase then due and thereafter continues to pay or tender in Court such rent and permitted increase till the suit is finally decided and pays cost of the suit as directed by the Court. There are two parts in this sub-section. The first is obligation of the tenant to deposit on the first day of hearing of the suit the rent which includes arrears of rent. The second part is that the tenant should continue to pay or tender in Court the rent, etc., till the suit is finally decided."

"Para 14. The requirement of Sec.12(3)b) are mandatory and not directory. Strict compliance has to be made of the provisions to this sub-section if the tenant wants to avail of its benefit. If on the other hand he fails to comply with the legislative mandate of depositing the rent including arrears of rent on the first date of hearing of the suit he cannot claim protection of this section simply by saying that the entire amount was deposited in the appellate Court."

15.9. He further submitted that as per the Rent Note it was yearly rent and therefore also decree under Sec.12(3)(b) of the Act cannot be passed.

15.10 He further submitted that in 1978 Respondent Sarojben's husband became entitled to recover possession. After her husband death Sarojben could not have filed the suit on the basis of arrears of rent from 1972 onwards, in view of the judgment of the Hon'ble Supreme Court reported in AIR 1995 SC 448. He further submitted that as per Application No.7 of 1978 made under Sec.5(3)(c) of the Rent Act was decided on 26-9-1979 and in that application it was submitted that Shantaben, widow of Dahyabhai was a tenant of the suit premises and in that view of the matter the liability of Shantaben started in 1978 as per the law laid down by the Hon'ble Supreme Court.

15.11 He has relied upon the judgment of the Hon'ble Supreme Court in the case of N.M.Engineer and others Vs. Narendra Singh Virdi and another reported in AIR 1995 S.C. Page 448. In para 23 the Hon'ble Supreme Court has observed as under:

"Therefore, whatever might have been due prior to deed of lease dated 8-6-67, could not constitute arrears of rent. It was mere actionable claim.

That being so, the notice does not satisfy the requirements of S.12(3)(a), mo.R

as stated above, the arrears at the rate of Rs.87/- had been deposited. It is not open to the appellant to call upon S.12(3)(b)."

15.12 He further submitted that if the liability considered from 1979 following payments which are receipted are required to be taken into consideration.

Amount Date of Payment Receipt No.

561.00 26.11.1980 B85828
187.00 06.03.1981 B85869
324.00 24.11.1982 A407076
50.00 21.01.1983 B54207
40.00 03.05.1983 0039323
100.00 01.07.1983 B59294

1312.00 Till the date of decree.

2156.00 16.12.1985 0077861.

3468.00 Total

15.13 Learned counsel for the petitioners submitted that in the alternative and without prejudice to the aforesaid grounds, even the decree could not have been passed under section 12(3)(b) of the Rent Act because the rent is paid as per the schedule of payment [as shown in the statement] showing details of payment. He submitted that, the fact that the trial court has to adjudicate that means that tenant has raised a bonafide dispute of a standard rent. It was further submitted that even if rent was payable by the tenant from 1972, when the standard rent was fixed on 29.10.1985, an amount of Rs.1,312.00 was already deposited in the Court and thereafter within a period of short period a further amount of Rs.2,156.40p/was deposited and this is done exactly in accordance with the requirement of this Hon'ble Court that if the standard rent is fixed, the tenant is required to give reasonable time to make payment of the deficit amount. In view of the same, no decree could be passed under Section 12(3)(b) of the Act.

16. In view of the above submission it was stated that the courts below have erred in passing the decree of possession in favour of the landlord-plaintiffs and against the tenant-defendants.

16.1 In view of the aforesaid judgement cited by the learned counsel for the petitioners-defendants, it was stated that the decree passed by the trial court is erroneous and requires to be quashed and set aside.

17. Mr. S.M. Shah, the learned counsel for the respondent-landlord has stated that in this case the premises were already let out on rent on 14/1/1933 and Rent Note was also executed on the same day, which has been produced at Ex.116. The premises was originally given on rent for three years and the yearly rent of Rs.187/- was fixed. House Tax was also to be borne by the landlord. Other tax may also to be borne by tenant. He has further stated that the tenants are not yearly tenants. He has further submitted that the tenancy is created by contract. Chapter 5 of the T.P. Act provides for lease of immovable property. Sec.105 provides how the tenancy is created. Sec.107 of the Transfer of Properties Act (hereinafter shall be referred to as "the T.P. Act" for short) which provides that a lease of immovable property for any term existing one year can be made only by registered instrument; here in the present case as the said instrument is not registered, the tenancy cannot be created yearly tenancy. This is also a tenancy for residence and not for business purpose and in view of Sec.106 of the T.P. Act, the Court has to presume that the tenancy in the present case, is a monthly tenancy and if that is so, monthly rent comes to about Rs.17.50/in the year 1933. He has further submitted that as per the definition of "standard rent" as contained in Sec.5(10)(a)(ii) of the Bombay Rent Act, the rent on which premises was let out before 1/9/1940, would be standard rent i.e. Rs.17.50 becomes "standard rent" in this case. This clause must be read in consonance with the intention of legislature.

17.1 The learned advocate for the respondent has relied upon the judgement of this Court rendered in the case of Patel Chunibhai Dhanjibhai Versus Patel Vallabhbhai Ambalal, reported in 1976 (16) GLR page 481, wherein this Court (Coram : S.H. SHETH, J.), after relying upon the judgement of the Hon'ble Supreme Court in the case of Ram Kumar Das Versus Jagdish Chandra Deo and ors., reported in AIR 1952 SC page 23 and also after relying upon the provisions of T.P. Act including

Sec.116 of the T.P. Act, in the said judgement in para 8 on page 483, it is held as under;

8. In other words, sec.116 provides that if
there was no agreement between the parties to show anything to the contrary, the lease would be renewed either from year to year or from month to month according to the purpose for which the property was leased. So far as the purpose is concerned, the court has to look at sec.116. Mr. Shah has argued that sec.116 contemplates annual leases for agricultural and manufacturing purposes and monthly leases for all other purposes. The first question which I am, therefore required to examine is whether there was any tenancy to the contrary between the parties after the expiry of the period of lease evidenced by rent note Ex.61. The rent note Ex.61 which records the terms of the transaction states that the rent for the suit premises was fixed at Rs.91/- per year. The plaintiffs have alleged in the plaint that the rent in respect of the suit premises was later on fixed at Rs.60/per year or Rs.5/- per month. The fact has been admitted by the defendant in paragraph 5 of his written statement Ex.30. since the material term as to the rent was admittedly modified later on, it must be stated that there was a fresh agreement between the parties in so far as that term was concerned. There is no evidence to show that there was any fresh agreement which varied the terms of the tenancy particularly the term relating to the duration of the tenancy. In absence of any agreement to show that the aforesaid term of tenancy was modified or varied by the parties, what is the presumption which I am required to draw. Sec.116 requires in such cases that the court should presume that the lease was renewed either from year to year or from month to month depending upon the purpose for which the property was leased. Admittedly the property was not leased either for agricultural

purpose or for manufacturing purpose. Therefore, no presumption of an annual tenancy can be made under sec.106 of the Transfer of Property Act in respect of the suit premises. Sec.106 which enables the court to raise a presumption as to the duration of tenancy was from month to month. There is no evidence on record to show that after the expiry of the period of rent note Ex.61 there was a fresh agreement between the parties to continue the lease in respect of the suit premises from year to year. In light of this fact and in light of the fact that the suit premises were originally let out for a purpose other than the agricultural or manufacturing purpose, I must hold that the lease was renewed after the expiry of the period of rent note Ex.61 from month to month. Merely because the plaintiffs have stated that the annual rent was fixed at Rs.60/- per year, it does not mean that the parties had agreed to the renewal of lease from year to year after the expiry of the period of original rent note Ex.61."

17.2 The similar principle has also been stated in the case of Shah Babulal Somalal versus Shah Kantilal Hargovandas, wherein the Division Bench of this Court has reiterated the judgement reported in 1979 (20) GLR 36.

17.3 The learned advocate for the respondent has relied upon the judgement of Privy Council in the case of Prahladrai Chooreewalla versus Commissioner for the Port of Calcutta, reported in AIR 1939 Privy Council 11, in which on page 13 it is held as under;

"Unless there was some indication to the contrary, the term "ordinary tenant" would in Calcutta mean monthly tenant, even though there were no reference to payments of monthly rent, and such a tenancy would be terminable on 15 days notice expiring with the end of the month of the tenancy. That meaning, in their Lordships' view, is not altered because the letter of 28th June goes on to provide for 15 days notice by the lessee without mention of notice by the lessor. Such a provision might

naturally be made by a tenant to safeguard his right to terminate the tenancy in 15 days leaving the landlords' right to be governed by the ordinary rule. The mere omission of such a provision in the landlords' favour does not even by implication prevent the landlord from relying upon his ordinary rights".

17.4 The learned counsel for the respondent has relied upon the judgement of the Harilal Shamalji Parikh Vs. The Jain Co-Operative Housing Society Ltd., reported in (1957) 59 Bombay Law Reporter page 217, in the said judgement, on page 220 the Honourable Court has held as under;

"This is a case in which the premises were first let after September 1, 1940, and therefore, it is only if, in the opinion of the Court, the contractual rent is excessive that there would be jurisdiction in the Court to fix what is a just standard rent. Mr. Laud contends that anything in excess of what is fair and reasonable, that is, in this particular case, anything in excess of Rs.520, is necessarily excessive; but in my opinion, that would be equating the word "excessive" with "not reasonable", whilst in point of fact it has, in its ordinary usage in the English language, a somewhat different meaning. There is always a gap between what is reasonable and what is excessive, and what is excessive does not begin where what is reasonable necessarily ends. If the rent is within this gap between what is excessive and what is reasonable, the court, in my opinion, has no jurisdiction to fix a just rent in such a case....."

17.5 The learned counsel for the respondent has further relied upon the another decision in the case of Ramarao Raoji Palkar vs. Amir Kasam Bhagwan, reported in (1956) 58 Bombay Law Reporter, in the said judgement, on page 288, the Honourable Bombay High Court has held as under;

"We are accordingly of the opinion that the word "rent then due" in cl.(b) of sub-s.3 of s.12 should be construed to mean all rent in arrears or outstanding, including rent which cannot be

recovered thorough the process of the court owing to the bar imposed by the Limitation Act....."

17.6 The learned counsel for the respondent has also relied upon the decision in the case of V. Dhanpal Chettiar Vs. Yesodai Ammal, reported in A.I.R. 1979 S.C. 1745, wherein on page 1745, the Honourable Supreme Court has held as under;

"In order to get a decree or order for eviction against a tenant under any State Rent Control Act, it is not necessary to give notice under section 106 of the T.P. Act. Determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continuous to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceedings on the basis of the determination of the lease by issue of notice in accordance with Sec.106 of the T.P. Act....."

17.7 The learned counsel has further stated that in this case statutory notice was issued by the landlord on 3rd October, 1979 and the same was served to the tenant on 5th October, 1979. The defendant tenant has replied to the same. From the postal acknowledgment, the reply has been received by the landlord on 7th November, 1979. In the reply it is only stated that the rent is excessive and so can be said that the tenant has failed and neglected to raise the dispute of standard rent within a period of one month from the date of receipt of the said notice.

17.8 He has further stated that if the tenant wants to enjoy the protection of the Rent Act, he must pay all the rents which was not paid by the tenant to the landlord. He has also relied on the finding of the appellate court in para 10 of the judgement of the appellate court and submitted that according to the case of the landlord the tenants were in arrears of rent from 1.7.1972 to 30.9.1979. It was the case of the landlord before the courts below that the tenant were in arrears of rent from 1.7.1972 to 30.9.1979 as per the rent notice. In reply to the landlord's statutory notice

Exh. 108 the defendants tenants have raised the dispute that rent is also paid to another co-owner. The tenant Bhagubhai Dahyabhai, in para 10 at Exh. 133, has stated that he has given rent during the period from 1972 to 1978 to one Pramodbhai. However, in cross-examination, the tenant also said that in the year 1978 one Ajitbhai came at Dakor and he collected rent. It was pointed out before the trial court that Pramodbhai died on 10.8.1972 and death certificate of Pramodbhai was produced on record at Exh. 95. Ajitbhai has not been examined to prove that he has collected the rent. He, therefore, submitted that the tenant failed to prove that he has paid arrears of rent to the landlord. Therefore, the tenant has not paid rent for more than six months. He is in arrears of rent for more than six months which has been proved before the Trial Court also. He has also stated that even time barred arrears of the rent, the tenant should deposit and he failed to deposit the arrears of rent by deducting time barred rent. Therefore, also the tenant cannot get protection of Section 12(3)(b) of the Rent Act.

17.9 It was also stated that the dispute regarding the standard rent was not a bonafide dispute and therefore also, the tenants are not entitled to get the advantage of dispute regarding standard rent. The dispute regarding standard rent must be bonafide dispute. In support of the same, the learned counsel for the respondent plaintiff has relied upon the judgement of this Court in the matter of 25 GLR page 567 in the case of Taraben Sakarlal Shah Versus Shah Jethalal Maganlal. In first headnote regarding para 8 of the said judgement, the Hon'ble Court has observed as under;

"Merely raising a dispute of standard rent which cannot be substantiated would not be enough to take out the case from the purview of Sec.12(3)(b) of the Act. If the tenant failed to pay the arrears of rent within one month from the date of receipt of notice by him and if it is found from the evidence on record that the dispute about the standard rent raised by him in reply to the notice was not bonafide, it cannot be said that the defendant was ready and willing to pay the rent and in such a case, the defendant would not be protected by Sec. 12(1) of the Rent Act. In such a case a decree of eviction is bound to follow, even if after the suit is filed, he pays all the arrears of rent (Para 8)".

17.10 The learned counsel for the respondent has also relied upon the judgement of the Apex Court in the case of Arjun Khiamal Makhijani vs. Jamnadas C. Tuliani and ors., reported in 1990(1) Rent Control Journal page 218, in which in para 5 page 233, and para 7 page 225, the Honourable Supreme Court has held as under;

5. On a plain of a clause (a) of sub-section 3 of section 12 of the Act as it stood at the relevant time, the said clause was clearly attracted and the consequence provided therein had to follow namely a decree for eviction against the tenant had to be passed. Clause (b) of Sub-Section (3) on the face of it was attracted in much as the said clause applied only to a case not covered by clause (a).....

17.11 The learned counsel for the respondents has also relied upon the judgement in the case of Badharsing Mohansing Versus Bai Savita w/o. Navnit Tribhovandas, reported in 24(2) GLR page 1790. In para 13 and 20 of the said judgement, the Hon'ble Court has observed as under ;

"13. If the tenant wants to avail of the protection of Sec.12(3)(b), he has to satisfy the condition of Sec.12(3)(b). A defaulting tenant could be granted relief under Sec. 12(3)(b), if on the first day of hearing of the suit for eviction on the ground of non-payment of rent, or on or before such other date, as the Court may fix, on the application of the tenant, he must pay the arrears of rent and permitted increases then due to the landlady as may be directed by the Court and thereafter, the tenant must continue to pay regularly, during the pendency of the suit and the appeal, such rent and permitted increases, periodically. The tenant is entitled to the protection of Sec. 12(3)(b) on the aforesaid conditions which must be strictly complied with, by the tenant. In the present case, he has failed to comply with the said condition.

20. The word "on or before such other day as the Court may fix" which follow the first expression clearly indicates that the Legislature indicated first day of hearing as the one when the Court applies its mind and if the tenant fails to pay on the first day of hearing, he must pay on such other day as the Court may fix. It is very clear from the facts and circumstances that the tenant had not applied for extension of time. Not only that but, despite specific direction by the Court under Sec.11(4) of the Bombay Rent Act, below Exh.16 passed on 17/7/1978, the tenant had not paid up the rent. The tenant failed to comply with direction of the Court. Therefore, his defence was struck off. The tenant had also preferred revision before the District Court, and thereafter during the pendency of the revision, the tenant had deposited for the first time, Rs.6,830/on 17/12/1978. In view of the facts and circumstances narrated hereinabove, it is clear that the tenant has failed to comply with the conditions of Sec.12(3)(b).

17.12 The learned counsel has also relied upon the judgement of the Supreme Court in the Case of Ganpat Ladha Vs. Shashikant Vishnu, reported in 19 GLR 502. In para 11 of the said judgement, the Hon'ble Court has observed as under;

"11. It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of landlord's power to evict them, in these days of scarcity of accommodation, by ascertaining his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who failed to carry out their obligation to pay rent to the

landlord despite opportunities given by law in that behalf. Thus, Sec. 12(3)(a) of the Act makes it obligatory for the Court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J) in *Ratilal Balabhai Nazar V. Ranchhodbhai Shankerbhai Patel & Ors.*, AIR 1968 Gujarat 172 : IX GLR 48. If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under Sec. 12(3)(a) to get a decree for eviction. But where the conditions of Sec. 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Sec. 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfil the conditions, he can not claim the protection of Sec. 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how and by judicial valour discretion exercisable in favour of the tenant can be found in Sec. 12(3)(b) even where the conditions laid down by it are satisfied to be strictly bonafide within the limits of prescribed for their operation. We think that Chagla, C.J., was doing nothing less than legislating in *Kalidas Bhavan's case (Supra)*, in converting the provisions of Sec. 12(3)(b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this Court referred to above in any case, make the position quite clear. Sec. 12(3)(b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the Section. If the statutory provisions do not go far enough to relieve the hardship of tenant the remedy lies with the legislature.

It is not in the hands of Court."

17.13 The learned counsel for the respondent has alternatively submitted that in this case, the trial court decreed the suit under Sec.12(3)(b). He has further submitted that the plaint nowhere states that the decree is sought only under Sec.12(3)(a) of the Rent Act. It only seeks decree for possession on the ground of non-payment of rent and so Courts below have rightly decreed suit for possession under Sec.12(3)(b) of the Rent Act.

17.14 The learned counsel for the respondent has alternatively further submitted that even if Sarojben became entitle to get possession of the suit premises in 1978, the present suit has been filed in November, 1978 for arrears of more than 6 months and so in any view of the matter, Sarojben was entitled to file the suit on the ground of arrears of rent in November, 1978.

17.15 The learned counsel for the respondent has further submitted that the trial court looked into the assertion of dispute forgetting the dispute as to standard rent is not a bona fide in the facts of the case and as such Sec12(3)(b) was correctly applied. For his such contention, the learned counsel for the respondent has relied upon the case of Gauri Shankar Chittarmal Gupta vs. Smt. Gangabai Tokersey, reported in AIR 1971 S.C. page 659, in which in para 14, the Hon'ble Supreme Court has held as under;

14. Even otherwise if the appellant was in any manner of doubt on this point or required any clarification from the respondent, normally he should have called for information on those points especially when he was sending replies through a lawyer to the notices issued by the respondent. Excepting baldly saying that the claim was excessive, he never cared to ask for any particulars. The appellant must have been well aware that the standard rent in this case is Rs.45/per month and that the respondent was entitled to an increase not exceeding 7.1/2 % under Sec.10(C)....."

17.16 The learned advocate for the respondent has further submitted that even if Sec.12(3)(b) is required to be complied with then the tenant failed and neglected to comply with the said condition.

17.17 The learned advocate for the respondent has alternatively submitted that in this case both the Courts below i.e. the Trial Court as well as the Appellate Court has reached the finding of fact that the landlord is entitled to decree for possession, and under revisional jurisdiction under Sec.29(2), this Court should not interfere with the concurrent finding of fact reached by both the Courts below. The Court has to only consider as to whether the Trial Court has kept itself within proper bounds and this Court has only to see that as to whether the Trial Court has applied correct principle of law to the facts before it and has not committed any irregularity or relied on evidence not on record or which would not be looked into according to law. He has stated that in this case correct principles are applied and all points necessary in the evidence is considered by the trial court, moreover, both the courts below have given cogent and convincing reasons and as there is no jurisdictional error, and therefore, the revisional court should not interfere with under Sec.29(2) of the Rent Act.

17.18 It was also stated by the learned counsel for the plaintiff-landlord that his Court should not exercise power under Sec.29(2) of the Rent Act for quashing and setting aside the said decree of possession when both the Courts below i.e. Trial Court and the Appellate have passed the decree for eviction in favour of the plaintiff and when both the Courts below have exercised its judicial discretion, this Court will not interfere with the said discretion when the same is based on sound principles.

17.19 As regards jurisdiction under Sec. 29 is to be considered. The learned counsel for the respondent also relied upon the judgement reported in AIR 1999 S.C. 100 in the case of Sarla Ahuja Versus Union of India Insurance Co. Ltd. In para 11 and 17 of the said judgement, the Hon'ble Supreme Court has observed as under;

"11. Learned Single Judge of the High Court
in the present case was reassessed and
reappraised the evidence afresh to reach
a different finding as though it was
exercising appellate jurisdiction. No
doubt even while exercising revisional
jurisdiction a reappraisal of evidence
can be made, but that should be for the
limited purpose to ascertain whether the

conclusion arrived at by the fact finding Court is wholly unreasonable. A reading of the impugned order shows that the High Court has over-stepped the limit of its power as a revisional court. The order impugned, on that score, is hence vitiated by jurisdictional deficiency.

17. Rent Controller approved the claim of the landlord as bona fide after taking into account the aforesaid board aspects. It cannot be said that the Rent Controller had taken into account irrelevant factors in reaching the conclusion. Hence, the High Court has improperly exercised its revisional jurisdiction in upsetting the findings of the Rent Controller."

18. In my view, the rent note is executed in 1933 for yearly rent which is not registered which has been produced at Exh.33. As per provisions of Transfer of Property Act and case of Chunibhai Dhanjibhai the Court can only assume that yearly rent of the premises is Rs.187 divided by 12. If I so consider that rent is approximately Rs.15.50 ps. per month. In that additional tax can be added so the rent permitted increase become Rs.17.50p/- per month. In view of the definition of "standard rent" contained in Sec.5(10)(a)(ii) of the Rent Act, the rent on which premises was let out before 1.9.1940 would be "standard rent" and therefore Rs.17.50p/- becomes standard rent. It cannot be called excessive rent or not reasonable rent. In view of the same, an application filed by the tenant for fixing standard rent cannot be called a bonafide application for fixing standard rent. In my view, in view of peculiar facts and circumstances of the case the tenant did not wait till the trial court fixes the standard rent in this behalf. In this case it is an obligation on the tenant to pay Rs.17.50p/- p.m. from 1933 to the landlord even before trial court decides the dispute of standard rent. In view of this factual position, the relaince placed by the learned counsel for the petitioner in the case of Gangaben Pujabhai, Rupaben and Pinjara Habib (supra) will not help the case of the tenant. In this case as tenant failed and neglect to pay the amount of rent of Rs.17.50p/- p.m. he deemed to be failed and neglect to pay the amount of rent in question and thereby he has not been able to comply with the condition of Sec.12(3)(b) of the Act.

18.1 In my view, in 1978, Sarojben became entitled to recover possession and so Sarojben can file suit in November, 1978 for arrears of rent and therefore, the said suit is maintainable in this behalf.

18.2 In my view, the statutory notice was served on the tenant on 5th October, 1979, whereas reply to the said notice reached the landlord on 7th November, 1979, and therefore, the tenant failed and neglected to raise the dispute of standard rent within a period of one month from the date of receipt of the notice.

18.3 In my view, the plaint nowhere states that the decree is sought for under Sec.12(3)(a) of the Rent Act. It only seeks decree for possession on the ground of non-payment of rent and so, the court can look into Sec.12(3)(b) of the Rent Act which is applicable in the case. In my view the judgment cited by the learned counsel for the petitioner of Narbheram Amberam (Supra) will not be applicable in the facts and circumstances of the case.

19. I have gone through the entire evidence on record, the judgement of the Trial Court and the Appellate Court and the submissions made by the learned advocates for the appellants and respondents. In my view, the trial court rightly came to the conclusion that tenant was in arrears of rent. The trial court rightly came to the conclusion that the tenant has to strictly comply with Sec.12(3)(b) of the Act. The tenant has violated condition of Sec.12(3)(b) of the Act. In my view the appellate court has also examined the case and rightly came to the conclusion that Rs.17.50 is not excessive rent but is reasonable rent, and therefore, it is a standard rent and the dispute of standard rent is not a bona fide dispute and therefore, the tenant is not entitled to get benefits of raising dispute of standard rent. The appellate court has rightly came to the conclusion that the tenant has not paid arrears of rent on the first day of hearing and when the statutory notice was served. The tenant was in arrears of rent for more than 6 months and he has not paid all the arrears of rent, the tenant has not complied with the direction given to him to get benefit of Sec.12(3)(b) of the Rent Act, however, no further protection is given under the Act to the defaulter tenant. so the decree of possession which has been passed by the trial court and which has been confirmed by the appellate court is on the basis of legal settled position and legal principles. Both the courts below

have given cogent and convincing reasons for passing decree of possession, and therefore, I do not find any justification for interfering with the concurrent finding of fact given by both the courts below i.e. the trial court and the appellate court. There is no jurisdictional error committed by both the courts below. The decree for possession which has been passed in favour of the landlord and against the tenant is required to be confirmed and the Civil Revision application is required to be dismissed.

20. In view of the facts and circumstances of the case and considering the rival submissions of both the learned advocates representing the parties, the decree of possession passed by the trial Court and appellate Court, is required to be confirmed. The same is hereby confirmed. This Civil Revision Application is accordingly dismissed. Rule is discharged.

20.1 The tenants are hereby directed to hand over the peaceful and vacant possession of the disputed premises to the landlords within a period of three months from the date of this order on condition that the tenants will give undertaking before this Court within a period of three weeks that the tenants will hand-over peaceful and vacant possession to the landlord within a period of three months and will not create any third party interest in the premises in question and till then the tenant will pay the rent regularly.

(K.M. MEHTA, J)

21. After the pronouncement of the aforesaid judgement, the learned counsel for the petitioner has requested to this Court to stay the execution and implementation of the judgement and order of this Court for a period of eight weeks from today. The request of the learned counsel for the petitioner is accepted. The implementation and execution of the aforesaid judgement and order is stayed upto 25th May, 2001.

Date: 23.3.2001 (K.M. MEHTA, J)

Rafik